

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON TAXATION**

**Call to Order:** By **CHAIRMAN ALVIN ELLIS JR.**, on March 16, 1999 at 8:00 A.M., in Room 413/415 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Gerry Devlin, Chairman (R)  
Sen. Bob DePratu, Vice Chairman (R)  
Sen. Dorothy Eck (D)  
Sen. E. P. "Pete" Ekegren (R)  
Sen. Jon Ellingson (D)  
Sen. Alvin Ellis Jr. (R)  
Sen. Bill Glaser (R)  
Sen. Barry "Spook" Stang (D)

**Members Excused:** Sen. John C. Bohlinger (R)

**Members Absent:** None

**Staff Present:** Sandy Barnes, Committee Secretary  
Lee Heiman, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 524, 3/13/1999  
Executive Action: None

**HEARING ON SB 524**

**Sponsor:** SENATOR DOROTHY ECK, SD 15, BOZEMAN

**Proponents:** Gordon Morris, Montana Association of Counties

**Opponents:** Dennis Burr, Montana Taxpayers Association  
Steve Snezek, Montana Association of Realtors  
Tom Harrison, Montana Society of CPAs

**Opening Statement by Sponsor:**

**SEN. DOROTHY ECK, SD 15, Bozeman,** said that **SB 524** is an income tax bill. She said **SB 524** limits the total amount that is deductible from individual income taxes for qualified residence interest payments and federal income tax paid to \$20,000 for single taxpayers and \$40,000 for married taxpayers filing jointly. It brings in \$38 million.

**Proponents' Testimony:**

**Gordon Morris, Montana Association of Counties,** said that this bill should be kept in this committee until there is a better feeling for what the grand scheme of things might be. He said the legislature is looking at all kinds of options, and this bill would be worth consideration.

**Opponents' Testimony:**

**Dennis Burr, Montana Taxpayers Association,** said that if you look at the combination of deductions in this bill, it does not affect just the very rich. He said \$38 million approaches 10% of income tax revenues. He said he expects that the impact would be to people who have newly acquired residential property compared to people who have paid that mortgage interest down over a period of time. He said he opposes this type of increase in income taxes.

**Steve Snezek, Montana Association of Realtors,** said he reluctantly rises against this bill because it takes away the mortgage interest deduction and federal income tax paid deduction for certain filers. He said this could potentially affect middle income filers, and in the future, as Montanans' incomes rise and these numbers are not adjusted up, more and more Montana citizens will be affected. He urged the committee to table this legislation.

**Tom Harrison, Montana Society of CPAs,** said that this bill is a very discriminatory, selective budget balancer. He said it goes against what public policy ought to be, and he urged the committee not to support this legislation.

**Questions from Committee Members and Responses:**

**SEN. DEPRATU** said he had concerns about this bill. He said this seems to be a monumental tax shift without tax relief. **SEN. ECK** agreed that this affects a small number of people at the very top end. She referred to a memo from the Department of Revenue, **EXHIBIT (tas59a01)**. She said the last page of this memo shows that if everyone, single and married, were capped at \$20,000,

almost everyone who paid this tax would be in the top decile, mostly in the top 5%. **SEN. DEPRATU** asked if **SEN. ECK** had any numbers from the Department of Revenue as to what percent of the total income tax collections the top 5% now pay, and **SEN. ECK** said that she had some information which showed that the number of households that would be affected by this cap is 35,000. **SEN. DEPRATU** said he had heard of higher income earners establishing residency out of the state because of their feeling that Montana's present tax system is punitive, and wondered if this might act as an incentive for more to do that. **SEN. ECK** said that she had heard of people establishing residency in states that don't have income taxes, and she did not think that this would cause any more of that.

**SEN. EKEGREN** said it seems counterproductive to work to give tax breaks in one area and then take it away by taxing in another area. He also said he is against raising taxes, and there seems that there is a prevailing philosophy to go after successful people. **SEN. ECK** said that the income tax is set up so that the higher wage you have, the higher percentage of income tax you pay. She said it is encouraging to see that there are a growing number of persons who have incomes around \$75,000, which is the upper middle income class. She said she feels that this legislation does address the inequities of a lot of what has been done. She said almost every tax break the legislature has given goes to people who have higher incomes and not much has been done for lower income earners.

**SEN. ELLIS** asked if **SEN. ECK** felt that the current income tax, from 2% to 11%, is not progressive enough, and **SEN. ECK** said **Ms. Paynter of the Department of Revenue** had said yesterday the effective tax rate was 5.9%. **SEN. ELLIS** said **SEN. ECK** had alluded to the legislature making the income tax less progressive, and he wondered what had been done to make it less progressive. **SEN. ECK** said the legislature has taken off the very high brackets. She said at one time it went up to 28%.

**SEN. ELLIS** asked if Montana had actually taken high brackets out of the picture, and **Brian Smith, Department of Revenue**, said he did not think Montana had made any significant changes to the income tax system in quite some time. He said the 11% top marginal rate has been in statute for quite a while, 20 years or so at least.

**SEN. ELLIS** said that **SEN. ECK** had alluded to some people having so large a deduction that they would not have to pay state income tax, and **Mr. Smith** said that there have been in the past some deductions for federal income tax paid that have been in excess of \$10 million, but whether or not that deduction eliminates

someone's state tax liability depends on a whole range of factors in each situation, and it may or may not affect that.

**SEN. ELLIS** asked **Mr. Harrison** the same question. **Mr. Harrison** said that there are very few people who fall within that classification, but it is conceivable that under some circumstances that can happen.

**Closing by Sponsor:**

**SEN. DEPRATU** said that **SEN. ECK** had to present another bill before Finance and Claims, and she had asked if she could be given the courtesy of being able to close during executive action on this bill. **CHAIRMAN ELLIS** said that was acceptable.

**NOTE:** **SEN. DEVLIN** resumed the chair.

**DISCUSSION ON REQUEST FOR COMMITTEE BILL**  
**ON ILLEGAL CIGARETTE SALES**

**SEN. DEVLIN** said that a request for a committee bill on illegal cigarette sales had been brought to the Taxation Committee by Mark Staples, who would explain his request.

**Mark Staples, Montana Wholesalers Association**, said that this is a problem that has just started with the raise in cigarette prices. He said that several attorneys general across the United States have entered into a settlement with the tobacco companies, and that has acted to increase the cost of cigarettes. Since the price of cigarettes have skyrocketed in order to fund this settlement, a "gray market" has come into being. That involves three things: 1) smuggling, 2) internet sales, and 3) off-shore sales. This bill would control the off-shore or "gray market" cigarette sales.

**Mr. Staples** explained that in gray market sales, the cigarette products are sent out into the ocean, supposedly to go to other countries which do not impose taxes. The ships turn around 20 miles off shore, come back into the United States, and the cigarettes, untaxed, get into the stream of commerce.

**Mr. Staples** said he is providing the committee copies of articles which indicate that in some states, 20% of cigarettes are these gray market cigarettes, which do not have the federal insignia on them. These sales could have a huge effect on the settlement amounts, and the Department of Revenue has said that this would be a helpful tool to enforce and cut down on these illegal sales. He said the Department has indicated that although they cannot

quantify it, sales of cigarettes are markedly off in the last six months.

**Mr. Staples** said he is also providing the committee with copies of the Colorado bill on this matter. The Department of Revenue has suggested that this Colorado legislation be adopted to Montana language, and started through the process. He said **SEN. DEPRATU** has expressed some interest in being the sponsor. He continued to say that on page 3 of the Colorado bill, line 23, "Nothing in this section shall be construed to require the Department to confiscate packages of cigarettes that are so marked in quantities less than ten cartons when the packages are held for personal consumption and not for resale," be stricken because it is a liberalization of Montana law that no untaxed cigarettes from anywhere are legal in Montana.

**CHAIRMAN DEVLIN** asked if there were other states that don't stamp their cigarette packages, or if all states stamp them, and **Mr. Staples** said he understood that there are one or two states that don't stamp. They have another mechanism for collecting the tax, but there is a way for people to tell that those cigarettes have been taxed. He said he did not believe there are any states that do not have a tax, except some of the tobacco-producing states. **CHAIRMAN DEVLIN** asked **Mr. Heiman** if he had looked this over, and **Mr. Heiman** said he had very briefly, but that it could be adapted.

**Motion:** **SEN. ELLIS MOVED THAT SUCH A BILL BE DRAFTED.**

**Discussion:**

**SEN. ELLINGSON** said **Mr. Staples** had indicated that all the tobacco companies are involved in this off-shore practice, and he wondered if there was any proposed federal legislation to deal with this. **Mr. Staples** said that the 1997 Budget Act imposes stiff fines on anyone caught selling or distributing diverted tobacco products as of 2000; however, there have been no funds appropriated for enforcement.

**CHAIRMAN DEVLIN** asked what kind of enforcement Montana would have to provide, and **Mr. Staples** said there is no Fiscal Note because the Department is not going to ask for anything else. He said the Department has said that this gives them the tools, when they do have a situation, to fine, confiscate and ban.

**SEN. ELLINGSON** said he had read a report that top executives in R. J. Reynolds had been charged with illegally smuggling into Canada and then bringing them back into the United States, and he wondered if this bill would deal with that situation. **Mr.**

**Staples** said he believes this gives the Department more strength in dealing with that as well.

**SEN. BOHLINGER** said that if the state is looking for some satisfaction in the cigarette settlement, and if this can help close the doors on smuggling and things which affect the sales of tobacco products in Montana, it should be brought forward.

**Vote:** Motion carried 9-0.

**Mr. Staples** provided the committee with a packet of information regarding this request, **EXHIBIT(tas59a02)**.

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**DISCUSSION ON COMMITTEE BILL  
ON RENTAL CARS**

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**SEN. DEPRATU** said that he had requested a committee bill regarding rental cars, but because he has a conflict of interest, he would appreciate someone else carrying the bill.

**CHAIRMAN DEVLIN** said that this committee bill came about because there was a problem with the amount of money that rental car agencies are paying. **SEN. ELLIS** said he would carry it.

**SEN. DEPRATU** said there is some additional language in there that Dave Galt had requested which gives additional strength to address the issue of vehicles that are licensed out of state with large fleets. **Mr. Heiman** said this takes two pieces of the international agreement and says that 1) when doing a fleet registration for Montana, companies have to report their year-long average of the number of vehicles, as opposed to their winter average; and 2) they have to make a representative sample of their entire fleet to determine the average value, not just allocate to Montana all of their small cars to pay the average value on.

**ADJOURNMENT**

Adjournment: 8:55 A.M.

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SEN. GERRY DEVLIN, Chairman

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SANDY BARNES, Secretary

GD/SB

**EXHIBIT (tas59aad)**